IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. CIVIL WRIT PETITION NO.9574/07
Om Prakash Vs. Addl. District Judge, Khetri

Date of order : 3/12/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Ram Pratap Singh for the petitioner.

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Heard learned counsel for the petitioner and perused the impugned order.

The petitioner has challenged the order dated 23.7.2007 whereby the appeal filed by the defendant-respondent has been allowed by quashing and setting aside the order dated 6.4.2007 passed by the trial court in the application under Order 9 Rule 13 CPC and the ex-parte decree dated 10.11.2005 passed against him was set

aside.

The learned Appellate Court on analysis of the arguments and evidence on record came to hold that the respondent was only served with the notice and notice was not accompanied with the copy of plaint and that the respondent himself never refused to accept notice and therefore the report of 6.2.2007 was made by the process server only by approaching the Chowkidar and that appropriate for him would be to enable the defendants to contest the matter rather than deciding the matter against him. While the learned trial court rejected the application, but the first appellate court on the aforesaid conclusion allowed the appeal by subjecting the respondents to just and reasonable

conditions. The respondent was required to pay a sum of Rs.2,000/- to the plaintiff as cost and further also pay the interest at the rate of 8% from the date of passing of the ex-parte decree till the passing of the impugned order by the appellate court on 23.7.2007.

In the circumstances of the case, I do not find any error in the order passed by the first appellate court so as to warrant interference.

The writ petition is dismissed.

(MOHAMMAD RAFIQ), J.

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